

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVE.  
HARTFORD, CT 06105-3725

██████████ 2023  
Signature Confirmation

Client ID ██████████  
Case ID ██████████  
Request # 219511

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2023, the Department of Mental Health and Addiction Services (“DMHAS”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) proposing to discontinue services under the Mental Health Waiver (“MHW”) Program effective ██████████ 2023.

On ██████████ 2023, ██████████, LCSW Director of Mental Health and Autism Waiver Services at ██████████ on behalf of the Appellant requested an administrative hearing to contest the DMHAS’s decision to discontinue services under the MHW program.

On ██████████ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2023.

On ██████████ 2023, ██████████ (“Conservator”), Conservator of the Person and Estate for the Appellant requested a continuance which OLCRAH granted.

On ██████████ 2023, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2023.

On ██████████ 2023, the DMHAS requested a continuance which the Conservator agreed upon and the OLCRAH granted.

On [REDACTED] [REDACTED] 2023, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] [REDACTED] 2023.

On [REDACTED] [REDACTED] 2023, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing via teleconference.

The following individuals called in for the hearing:

[REDACTED], Appellant

[REDACTED], Conservator of the Estate and Person for the Appellant

Katie Daly, LCSW, Mental health Waiver Program Manager, DMHAS

Jessica Bransfield, LCSW, Mental health Waiver Community Support Clinician, DMHAS

[REDACTED] Program Manager, [REDACTED].

[REDACTED] [REDACTED] Clinical Coordinator, [REDACTED]

Lisa Nyren, Fair Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the DMHAS's proposal to discontinue services under the MHW program effective [REDACTED] [REDACTED] 2023 was correct.

### **FINDINGS OF FACT**

1. The DMHAS operates the MHW program with oversight provided by the Department of Social Services ("DSS"). (Hearing Record)
2. The MHW program provides numerous home and community based services and supports to individuals who are age twenty-two or older, Medicaid eligible, have a serious and persistent mental illness diagnosis, and are at risk of entering a skilled nursing facility or require assistance with three (3) Activities of Daily Living ("ADL") or two (2) ADL's and 4 areas of cognitive impairments. (MHW Program Manager Testimony and Exhibit 1: 42 C.F.R. § 441.301)
3. Qualified candidates must reside in a community setting such as an independent apartment, home, or assisted living setting that can be owned, rented, or occupied by a legally enforceable agreement. The community setting must have lockable private space for candidates and if shared, the ability to select their roommates. The community setting must

be separate from an institutional setting. (MHW Program Manager Testimony and Exhibit 1: 42 C.F.R. § 441.301)

4. The Appellant receives services under the MHW program provided by [REDACTED] (“[REDACTED]” (Hearing Record)
5. On [REDACTED] [REDACTED] 2022, the Appellant was served a Notice to Quit Possession of her apartment located at [REDACTED] [REDACTED] (“apartment”). (Hearing Record)
6. On [REDACTED] [REDACTED] 2023, the Appellant’s annual assessment for services under the MHW program was completed and services continued. (Community Support Clinician Testimony)
7. Between [REDACTED] [REDACTED] 2022 and [REDACTED] [REDACTED] 2023, the Conservator, the DMHAS, and [REDACTED] support staff continued to work together to locate appropriate housing for the Appellant but were not successful. (Hearing Record)
8. On [REDACTED] [REDACTED] 2023, the Appellant was placed at a hotel after being evicted from her apartment after numerous attempts throughout the year to stay the eviction failed. The Appellant has a history of evictions. (Community Support Clinician Testimony and [REDACTED] Program Manager Testimony)
9. On [REDACTED] [REDACTED] 2023, the DHMAS placed the Appellant in a respite care facility operated by [REDACTED] located at [REDACTED] [REDACTED] (“RCF”) for clients in crisis. The Appellant remains at the RCF. The RCF is temporary housing for displaced individuals in crisis and can house up to 10 clients. The maximum stay at the RCF is 14-days. Stays longer than 14-days are approved daily. Residents are responsible for their own food, meals, bathing, and hygiene. As this is temporary housing, residents do not sign a lease and furniture is provided. The RCF is staffed but no medical services are provided. ([REDACTED] Program Manager Testimony)
10. The Appellant has exceeded her stay at the RCF. The Appellant remains at the RCF, which is authorized daily, because suitable permanent housing has not been located. (Hearing Record)
11. While at the RCF, the Appellant receives transitional case management services to assist in locating housing. Such services are limited to 25 hours per episode. The Appellant has exceeded 25 hours. (Community Support Clinician Testimony)
12. DHMAS determined the RCF is not an independent community setting but rather an institution and therefore, not a qualified setting under the MHW

program resulting in the Appellant's ineligibility for continued services under the MHW program. (MHW Program Manager Testimony)

13. On [REDACTED] [REDACTED] 2023, the DMHAS issued the Appellant and Conservator a Notice of Action proposing to discontinue services under the MHW program effective [REDACTED] [REDACTED] 2023. The DMHAS lists the reason for discontinuing services as: "Client does not reside in a qualified setting per Mental Health Waiver requirements. Client has been displaced for 60 days at time of this notice. If a qualified independent living environment is not procured by [REDACTED]/23 the waiver will be unable to continue to provide services." (Exhibit A: Notice of Action)
14. [REDACTED] staff continue to seek appropriate community placement for the Appellant but have not been successful due to the Appellant's history of evictions and some physical limitations that include the use of a walker for mobility. ([REDACTED] Program Manager Testimony)
15. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] [REDACTED] 2023. However, the hearing, which was originally scheduled for [REDACTED] [REDACTED] 2023 was rescheduled at the request of the Conservator which caused a [REDACTED]-day delay. Because this [REDACTED]-day delay resulted from the Appellant's request, this decision is not until [REDACTED] [REDACTED] 2023 and therefore timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes provides as follows:

The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Title 42 Section 441.300 of the Code of Federal Regulations ("C.F.R.") provides as follows:

Section 1915(c) of the Act permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization. Those services are defined in § 440.180 of this subchapter. This subpart describes what the Medicaid agency must do to obtain a waiver.

Federal regulation provides as follows:

“Home or community-based services” means services, not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this chapter.

1. These services may consist of any or all of the services listed in paragraph (b) of this section, as those services are defined by the agency and approved by CMS.
2. The services must meet the standards specified in § 441.302(a) of this chapter concerning health and welfare assurances.
3. The services are subject to the limits on FFP described in § 441.310 of this chapter.

42 C.F.R. § 440.180(a)

Federal regulation provides as follows:

If the agency furnishes home and community-based services, as defined in § 440.180 of this subchapter, under a waiver granted under this subpart, the waiver request must – limited to one or more of the following target groups or any subgroup thereof that the State may define:

- i. Aged or disabled, or both.
- ii. Individuals with Intellectual or Developmental Disabilities, or both.
- iii. Mentally ill.

42 C.F.R. § 441.301(b)(6)

3. The Application for 1915(c) HCBS Waiver CT 0653.R03.00 – Apr 01, 2022 as authorized under Section 1915(c) of the Social Security Act (“CTMHW”) permits the Department to furnish an array of home and community-based services that assists Medicaid beneficiaries to live in the community and avoid institutionalization. The Centers for Medicare & Medicaid Services (CMS) recognizes that the design and operational features of the waiver program will vary depending on the specific needs of the target population, the resources available to the state, service delivery system structure, state goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services. [Application for 1915(c) HCBS Waiver; CT 0653.R03.00 – Apr 01, 2022]

The CTMHW provides that DMHAS is the operating agency, under the supervision of DSS, that is responsible for components of the MHW program which includes: conducts initial assessments and required re-assessments of recipients using uniform assessment instruments, documentation and procedure to establish whether an individual meets all

eligibility criteria. [Application for 1915(c) HCBS Waiver; CT 0653.R03.00 – Apr 01, 2022]

4. Federal regulation provides as follows:

Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

- i. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
- ii. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
- iii. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- iv. Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- v. Facilitates individual choice regarding services and supports, and who provides them.
- vi. In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:
  - A. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
  - B. Each individual has privacy in their sleeping or living unit:

1. Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
2. Individuals sharing units have a choice of roommates in that setting.
3. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- C. Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.
- D. Individuals are able to have visitors of their choosing at any time.
- E. The setting physically accessible to the individual.
- F. Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:
  1. Identify a specific and individualized assessed need.
  2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
  3. Document less intrusive methods of meeting the need that have been tried but did not work.
  4. Include a clear description of the condition that is directly proportionate to the specific assessed need.
  5. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
  6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
  7. Include the informed consent of the individual.
  8. Include an assurance that interventions and supports will cause no harm to the individual.

42 C.F.,R. § 441.301(c)(4)

Federal regulation provides in pertinent part as follows:

CMS will require transition plans for existing section 1915(c) waivers and approved state plans providing home and community-based services under section 1915(i) to achieve compliance with home and community-based settings.

42 C.F.R. § 441.301(c)(6)(ii)

The CTMHW provides for the Home and Community-Based Settings as follows:

The state assures that this waiver renewal will be subject to any provisions or requirements included in the state's approved home and community-based settings Statewide Transition Plan.<sup>1</sup> The state will implement any required changes by the end of the transition period as outlined in the approved home and community-based settings Statewide Transition Plan. The state assesses the settings in which waiver applicants reside for compliance with the new rules as they apply for and are assessed for participation in the waiver.

Attachment #2: Home and Community-Based Settings Waiver Transition Plan and Section C-5, Application for 1915(c) HCBS Waiver CT 0653.R03.00 – April 1, 2022

**The DMHAS correctly determined the RCF does not meet the criteria required under 42 C.F.R. § 441.301(c)(4) as a qualifying setting under the MHW program.**

**The DMHAS correctly determined the Appellant ineligible for services under the MHW program and correctly proposed to terminate such services beginning [REDACTED] 2023 unless the Appellant secures qualified housing under the MHW program before services are terminated.**

5. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat, § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712(1990))

Section 1570.10(A)(1) of the Uniform Policy Manual provides as follows:

Except in situations described below, the Department mails or gives adequate notice at least ten days prior to the date of the intended action if the Department intends to: discontinue, terminate, suspend or reduce benefits.

**On [REDACTED] 2023, the DMHAS correctly notified the Appellant services under the MHW program would end effective [REDACTED] 2023 unless a qualified independent living environment is secured. The DMHAS correctly complied with adverse notice requirements allowing 30-days' notice prior to the termination of services under the MHW program.**

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<sup>1</sup> Connecticut Statewide Transition Plan for Alignment with the Home and Community Based Services (HCBS) Final Regulation's Settings Requirements – Amendment June 2018 approved by Department of Health and Human Services, Centers for Medicare and Medicaid Services, July 26, 2019 Memorandum



**DECISION**

The Appellant's appeal is denied.

*Lisa A. Nyren*  
Lisa A. Nyren  
Fair Hearing Officer

CC: [REDACTED]  
Katie Daly, LCSW, MHW Program Manager, DMHAS  
[REDACTED], MHW Program Manager, [REDACTED]  
Erin-Leavitt-Smith, Director, LTSS, DSS  
Community Options, [hearings.commops@ct.gov](mailto:hearings.commops@ct.gov)

### **RIGHT TO REQUEST RECONSIDERATION**

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within **25** days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on § 4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to Superior Court within **45** days of the mailing of this decision, or **45** days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on § 4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with § 17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.